

IN RE: PETITION FOR SPECIAL HEARING

At end of Donerin Way, 1,375 ft. E
centerline of Manor Road
10th Election District
6th Councilmanic District
(Centerline of Donerin Way,
East of Manor Road)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 05-231-SPH

Barbara Andrews
Petitioner

*
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at the centerline of Donerin Way, East of Manor Road in Baltimore County. Barbara Andrews, the Petitioner and legal owner of the property filed the Petition. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and Development Plan Order in Case No. CBA-99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require.

The property was posted with Notice of Hearing on December ___, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on December ___, 2004, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of

any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were submitted by the _____ dated _____, 2004, a copy of which is attached hereto and made a part hereto.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing and variance relief were _____ for the Petitioner. _____, Esquire represented the Petitioner. No Protestants or citizens attended the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The Petitioner is requesting to

Findings of Fact and Conclusions of Law

I find the request to

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be _____.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this ____ day of January, 2005, that the Petitioner's request for special hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R), to approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and

Development Plan Order in Case No. CBA-99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require, be and is hereby _____.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

THE END OF
for the property located at Donerin Way - EAST OF MAJOR ROAD
which is presently zoned RC-5 & RC-2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

NONE

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esquire

Name - Type or Print

Signature

Levin & Gann, PA

Company

502 Washington Avenue, Suite 800

410-321-0600

Address

Telephone No.

Towson

Maryland

21204

City

State

Zip Code

Legal Owners:

Interested Person, Representative of Prior Owner
& Petitioner per BCZR Section 500.7

Barbara Andrews

Name - Type or Print

Signature

Name - Type or Print

Signature

1552 Glencoe Road

410-771-4365

Address

Telephone No.

Glencoe

MD

21152

State

Zip Code

Representative to be Contacted:

Bruce E. Doak, PLS Gerhold, Cross & Etzel, Ltd.

Name

320 East Towsontown Boulevard, Suite 100 410-823-4470

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

1 HR

UNAVAILABLE FOR HEARING

—

Case No.

05 231 SPH

Reviewed By

JL

Date

11/05/04

ATTACHMENT

PETITION FOR SPECIAL HEARING

CASE NO: 05- -SPH

Address: Locksely Conserve - Donerin Way

Petitioner: Barbara Andrews

Present Zoning: RC-5

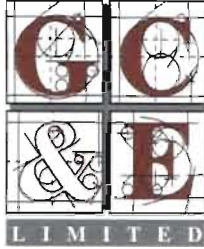
REQUESTED RELIEF:

"why the Zoning Commissioner should" [1] approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and Development Plan Order, pursuant to the Board's final order dated March 11, 1999 in Case No. CBA-99-101 regarding periodic studies until "development is completed; and the final use and occupancy permits have been granted on the last lot and house sold"; **and** [2] such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require.

FOR ADDITIONAL INFORMATION ON THIS PETITION, PLEASE CONTACT:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801
halderman@LevinGann.com



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towson Town Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

231

September 2, 2004

**ZONING DESCRIPTION
LOCKSLEY CONSERVE
10th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND**

All that piece or parcel of land situate, lying and being in the Tenth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning at a point in the centerline of Donerin Way, 50 feet wide, 1375 feet, more or less, northeasterly along the centerline of Donerin Way from the center of Manor Road, and being all those lots and parcels as shown on a plat titled "Locksley Conserve" and recorded among the Land Records of Baltimore County in Platbook S.M. No. 72 folio 72.

Containing 49.037 acres of land, more or less.

This description only satisfies the requirements of the Office of Zoning, and should not be used for conveyance purposes.



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 42654

DATE 11/05/04 ACCOUNT 001 006 6150

AMOUNT \$ 325.00

RECEIVED FROM: LOCKLEY ASSURVE INC.

FOR: SPH to amend FDP.

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DAY
11/05/2004	11/05/2004	10:55:09	2
REG 4502	PAID	JEVA JFE	
->RECEIPT # 371628 11/05/2004 OFLN			
Dept 5 520 BUDGET VERIFICATION			
CR NO. 042654			
Receipt Tot		\$325.00	
\$325.00 OK		\$0.00 CA	
Baltimore County, Maryland			

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #05-231-SPH

End of Donerin Way, east of Manor Road

Centerline of Donerin Way, 1,375 ft. east of Manor Road

10th Election District - 6th Councilmanic District

Legal Owner(s): Barbara Andrews

Special Hearing: to approve the elimination of the 'additional condition' added to the Hearing Officer's Opinion and Development Plan Order Case Number CBA99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require.

Hearing: Tuesday, December 28, 2004 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

WILLIAM WISEMAN

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/12/647 Dec. 14

32905

CERTIFICATE OF PUBLICATION

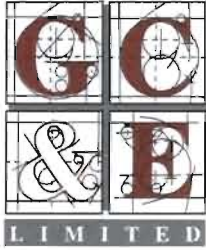
12/16/2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/14/2004.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

J. Wilkinson

LEGAL ADVERTISING



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE NO.
#05-231-SPH
PETITIONER/DEVELOPER:
Barbara Andrews
DATE OF HEARING:
December 28, 2004

**BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204**

ATTENTION: KRISTEN MATTHEWS

LADIES AND GENTLEMEN:

**THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY
SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT**

LOCATION:

End of Donerin Way, East of Manor Road

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD

SUITE 100

320 EAST TOWSONTOWN BLVD

TOWSON, MARYLAND 21286

410-823-4470 PHONE

410-823-4473 FAX

POSTED ON: 12/10/04

ZONING NOTICE

CASE # 05-031-8PH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSION
IN TOWN, MD.

PLACE: Room 401 County Court Building
401 South Street, Towson, MD

TIME & DATE: Tuesday, December 14, 2005 at 6:00 PM

Special Ordinance: To approve the amendment
of the "Administrative Codebook" added to the
Zoning Officer's Ordinance and Development
Plan Ordinance Number (284-05-101) and
with additional notice of this case as pre-
sented at the time of the hearing on 12/14/05.
See map nearby.

12/10/2004



12/10/2004

**Department of Permits and
Development Management**

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

**Baltimore County**

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 23, 2004

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 05-231-SPH

End of Donerin Way, east of Manor Road
Centerline of Donerin Way, 1,375 ft. east of Manor Road
10th Election District – 6th Councilmanic District
Legal Owner: Barbara Andrews

Special Hearing to approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and Development Plan Order Case Number CBA 99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require.

Hearing: Tuesday, December 28, 2004 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Howard Alderman, Jr., Levin & Gann, 502 Washington Avenue, Ste. 800, Towson 21204
Barbara Andrews, 1552 Glencoe Road, Glencoe 21152
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, DECEMBER 13, 2004.**
- (2) **HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.**
- (3) **FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.**



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number

05 231 SPH

Petitioner: BARBARA ANDREWS

Address or Location: SOUTHEAST END OF DONERIN WAY EAST OF MANDR RD.

PLEASE FORWARD ADVERTISING BILL TO

Name: BARBARA ANDREWS

Address 1552 GLENCOE ROAD

GLENCOE, MD 21152

Telephone Number: 410-771-4365

**Department of Permits and
Development Management**

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 23, 2004

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A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Howard Alderman, Jr., Levin & Gann, 502 Washington Avenue, Ste. 800, Towson 21204
Barbara Andrews, 1552 Glencoe Road, Glencoe 21152
Bruce Doak, 320 E. Towsontown Blvd., Ste. 100, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, DECEMBER 13, 2004.**
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- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



TO: PATUXENT PUBLISHING COMPANY
Tuesday, December 14, 2004 Issue - Jeffersonian

Please forward billing to:
Barbara Andrews
1552 Glencoe Road
Glencoe, MD 21152

410-771-4365

NOTICE OF ZONING HEARING

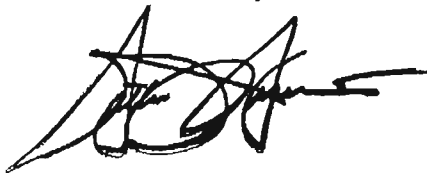
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CASE NUMBER: 05-231-SPH

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Legal Owner: Barbara Andrews

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Hearing: Tuesday, December 28, 2004 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM WISEMAN
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**Department of Permits and
Development Management**

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204



Baltimore County

*James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director*

December 21, 2004

Howard L. Alderman, Jr. Esquire
Levin & Gann
502 Washington Avenue, Ste. 800
Towson, Maryland 21204

Dear Mr. Alderman:

RE: Case Number: 05-231-SPH

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 5, 2004.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr." The signature is stylized with a large, flowing "W" and a prominent "J" at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Barbara Andrews 1552 Glencoe Road Glencoe 21152
Bruce Doak, Gerhold, Cross & Etzel 320 E. Towsontown Blvd, Ste. 100 Towson 21204

Visit the County's Website at www.baltimorecountyonline.info



Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
Tel: 410-887-4500



Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

November 22, 2004

ATTENTION: Zoning Review planners

Distribution Meeting of: November 22, 2004

Item No.: 227-²³¹241, 243, 245-249

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

6. The Fire Marshal's Office has no comments at this time.

LIEUTENANT JIM MEZICK
Fire Marshal's Office
PHONE 887-4861
MS-1102F

cc: File

Visit the County's Website at www.baltimorecountyonline.info



Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: December 1, 2004

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 5-231

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A. Cunningham

Division Chief: John Sanborn

MAC/LL

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*



Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 11.22.04

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 231 JLL

Dear Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*



Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

Date: 11.22.04

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 230 BPR

Dear Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.marylandroads.com

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: December 7, 2004

FROM:  Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For November 29, 2004
Item Nos. 227, 228, 229, 230, 231, 232,
233, 234, 237, 238, 239, 240, 241, 242,
243, 244, 246, and 248

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

RWB:CEN:jrb

cc: File

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
C/line of Donerin Way, E of Manor Road;
At end Donerin Way, 1,375' E of Manor Rd * ZONING COMMISSIONER
10th Election & 6th Councilmanic Districts
Legal Owner(s): Barbara Andrews * FOR
Petitioner(s) * BALTIMORE COUNTY
* 05-231-SPH

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence and documentation filed in the case.

RECEIVED

NOV 24 2004

Per *CLP*

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2004, a copy of the foregoing Entry of Appearance was mailed to Bruce E. Doak, Gerhold, Cross & Etzel, Ltd, 320 E Towsontown Blvd, Towson, MD 21286 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Filed to
zc

GORDON • FEINBLATT
ROTHMAN, HOFFBERGER & HOLLANDER, LLC

WILLIAM D. SHAUGHNESSY, JR.

410.576.4092

FAX 410.576.4246

wshaughnessy@gfirlaw.com

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfirlaw.com

December 20, 2004



VIA FACSIMILE (410-887-5708)
AND FIRST CLASS MAIL

Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Case No. 05-231-SPH
Location: End of Donerin Way,
1,375 feet east of Manor Road
Petitioner: Barbara Andrews
Scheduled Hearing Date: December 28, 2004 at 10:00 a.m.

Dear Mr. Kotroco:

I have been contacted by several area residents who desire to oppose the relief requested by Ms. Andrews in the above hearing. Please enter my appearance as counsel for at least one protestant, Mr. William Malstrom (15 Edgarwood Court, Phoenix, Maryland 21131). I may enter my appearance on behalf of others.

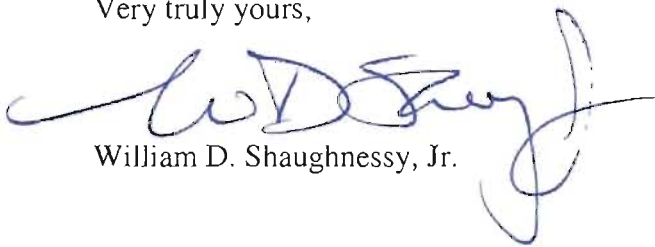
The special hearing in this matter seeks the elimination of a development condition imposed by the County Board of Appeals in Case No. CBA 99-101. I was the attorney for various of the protestants in that case before the Board of Appeals (CBA 99-101), as well as in the case before the Hearing Officer (98-319-SPH and X-354). I was unaware of the scheduled December 28, 2004 Special Hearing until several days ago when I was contacted by a local resident.

I respectfully request that the hearing scheduled for December 28, 2004 at 10:00 a.m. be postponed so that I might have the opportunity to discuss with my clients the modifications requested by the Petitioner, as well as review all documentation upon which the Petitioner bases the request, as well as evaluate the need for expert testimony at the hearing in this matter.

Accordingly, please postpone the currently scheduled hearing date and please have your office coordinate a mutually acceptable date for the hearing in this matter.

Thank you for your attention in this matter.

Very truly yours,



William D. Shaughnessy, Jr.

WDS/tgm

cc: Mr. William A. Malstrom
Howard R. Alderman, Esquire
Peter Max Zimmerman, Esquire
John V. Murphy, Deputy Zoning Commissioner

GORDON • FEINBLATT

ROTHMAN, HOFFBERGER & HOLLANDER, LLC

WILLIAM D. SHAUGHNESSY, JR.
410.576.4092
FAX 410.576.4246
wshaughnessy@gfirlaw.com

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfirlaw.com

December 20, 2004

VIA FACSIMILE (410-887-5708)
AND FIRST CLASS MAIL

Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits

OK to postpone
1/1

Work out
dates w/ parties

Re Tim
Best after
Howard Alderman's
request

or 28, 2004 at 10:00 a.m.

to oppose the relief
ranchise as counsel for at
enix, Maryland 21131). I

may enter my appearance --

The special hearing in this matter see
condition imposed by the County Board of Appeals
for various of the protestants in that case before the
in the case before the Hearing Officer (98-319-SPH
December 28, 2004 Special Hearing until several da
resident.

I respectfully request that the hearing
a.m. be postponed so that I might have the opportu
modifications requested by the Petitioner, as well as
Petitioner bases the request, as well as evaluate the
this matter.

Mark Flabicht
410-592-9220

cdl once date has
been set

GORDON • FEINBLATT

ROTHMAN, HOFFBERGER & HOLLANDER, LLC

WILLIAM D. SHAUGHNESSY, JR.
410.576.4092
FAX 410.576.4246
wshaughnessy@gfirlaw.com

ATTORNEYS AT LAW
253 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
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December 20, 2004

VIA FACSIMILE (410-887-5708)
AND FIRST CLASS MAIL

Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

OK to postpone

Re: Case No. 05-231-SPH
Location: End of Donerin Way,
1,375 feet east of Manor Road
Petitioner: Barbara Andrews
Scheduled Hearing Date: December 28, 2004 at 10:00 a.m.

Dear Mr. Kotroco:

I have been contacted by several area residents who desire to oppose the relief requested by Ms. Andrews in the above hearing. Please enter my appearance as counsel for at least one protestant, Mr. William Malstrom (15 Edgarwood Court, Phoenix, Maryland 21131). I may enter my appearance on behalf of others.

The special hearing in this matter seeks the elimination of a development condition imposed by the County Board of Appeals in Case No. CBA 99-101. I was the attorney for various of the protestants in that case before the Board of Appeals (CBA 99-101), as well as in the case before the Hearing Officer (98-319-SPH and X-354). I was unaware of the scheduled December 28, 2004 Special Hearing until several days ago when I was contacted by a local resident.

I respectfully request that the hearing scheduled for December 28, 2004 at 10:00 a.m. be postponed so that I might have the opportunity to discuss with my clients the modifications requested by the Petitioner, as well as review all documentation upon which the Petitioner bases the request, as well as evaluate the need for expert testimony at the hearing in this matter.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
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JENNIFER R. BUSSE
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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

May 26, 2005

*To Kristin:
Please combine these
memo's.
JRB*

Timothy M. Kotroco, Director
Office of Permits & Development Management
Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

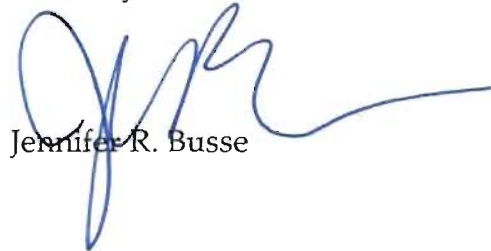
**Re: Westchester Oaks
PDM No. I-521
Zoning Item No. 05-561-A**

Dear Mr. Kotroco:

Please accept this letter as a request for a combined hearing pursuant to Baltimore County Code §32-4-230. The Development Plan in this matter was filed on May 19, 2005. The Petition for Variance was filed on May 2, 2005.

Thank you for your cooperation in this matter. Should you have any questions or comments, or need any additional information, please contact me.

Sincerely,



Jennifer R. Busse

JRB:ae

cc: Ms. Christine K. Rorke
Mr. Paul F. Mueller
Ms. Tobi Kester

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CAJMAN A. LEVIN (1930-2003)

August 14, 2006

Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

***Re: Case No. 05-231-SPH
Scheduling of Hearing***

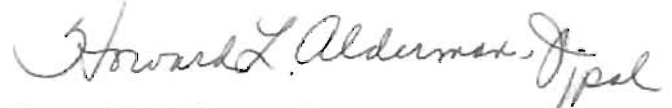
Dear Mr. Kotroco:

As you may recall, the hearing on the above-referenced case, involving the residential development known as Locksley Conserve, was continued from its originally scheduled date on December 28, 2004. Given the passage of time without resolution, it is apparent that this matter should be rescheduled for a public hearing on the issues presented.

Therefore, upon your receipt and review of this letter and its enclosure, I would appreciate it if you would have this matter scheduled, after conferring with counsel of record to insure that a mutually acceptable hearing date can be reached.

Thank you for your cooperation and assistance in this regard.

Very truly yours,



Howard L. Alderman, Jr.

HLA/pal

cc: Locksley Conserve, LLC
William D. Shaughnessy, Jr., Esquire

(c:\Clients\Andrews, Barbara(9657)\kotroco-a.ltr vpd

**Dictated by Howard
Alderman
but signed in his absence
to avoid delay.**

Work out hearing dates between
Howard Alderman & Bill Stallyns,
per Tim

8/31/06
Left message
about dates 19/17, 26, 27
and 30

to avoid delay
but signed in the absence
of the IA
Director, Howard

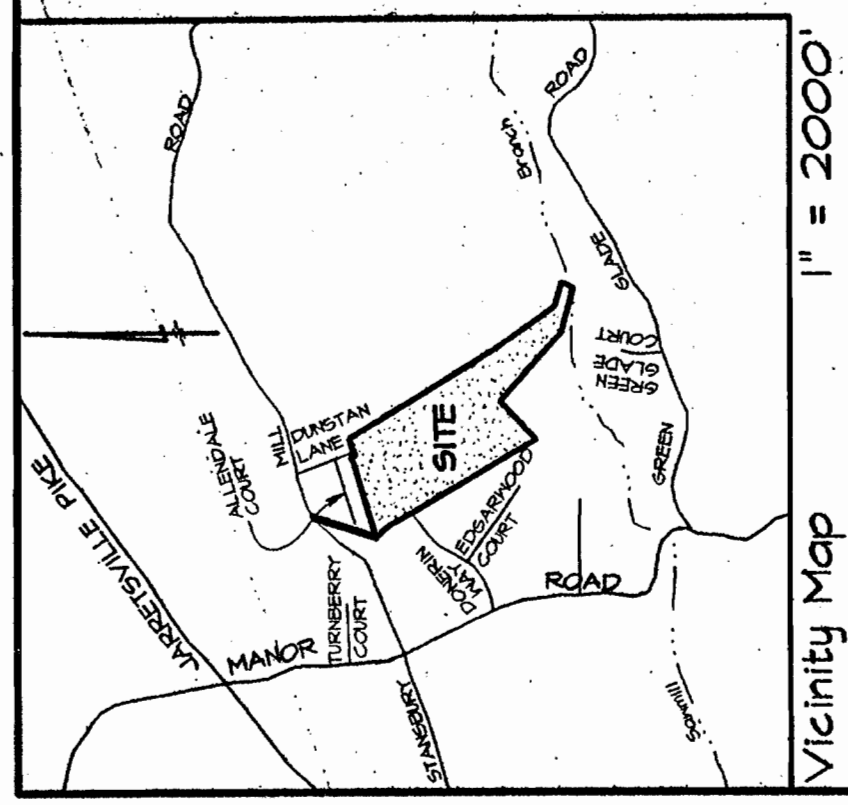




NE 22 D

NE 21 D

231



GENERAL NOTES

- [illegible]

FOREST BUFFER EASEMENT AND
FOREST CONSERVATION EASEMENT NOTES

- THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER OR FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPT. OF CONSERVATION EASEMENTS AND RECREATION. THE PROTECTIVE COVENANTS WHICH MAY BE FOUND AMONG THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS,

"I APPROVE THE ELIMINATION OF THE 'ADDITIONAL CONDITION' ADDED TO THE HEARING OFFICER'S OPINION AND DEVELOPED PLAN ORDER. PURSUANT TO THE BOARD'S FINAL ORDER DATED MARCH 11, 1984 IN CASE NO. 70-160, THE BOARD HAS CONSIDERED ALL RELEVANT FACTS, EVIDENCE IS COMPLETED, AND THE FINAL USE AND OCCUPANCY PERMITS HAVE BEEN GRANTED ON THE LAST LOT AND HOUSE SOLID; AND THAT SUCH ADDITIONAL RELIEF AS THE NATURE OF THIS CASE AS PRESENTED AT THE HEARINGS ON THIS PETITION PLAN REQUIRE."

HOUSE SOLD; AND
NATURE OF THIS CASE AS F
PETITION MAY REQUIRE.

OWNER
ESTATE OF ALBERT I. DUNSTAN
14900 DUNSTAN LANE
MONKTON, MARYLAND 21111

CONTRACT PURCHASER/
DEVELOPER
BARBARA ANDREWS
1552 GLENCOE ROAD
SPARKS, MARYLAND 21152
410-771-4865
PLAT TO ACCOMPANY

PDM No. X-354

DEVELOPMENT PLAN LOCKSLEY CONSERVE

FORMERLY DUNSTAN PROPERTY
END OF DONERIN WAY
Eased Ref: T.B.S. No. 1850 folio 341

Tax Account No. 10-04-075075
Zoned RC-2 & RC-5
Tax Map 36, Grid 14, Parcel 18

10th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

b6/
PLAN TO ACCOMPANY
HEARING OFFICER'S ORDER

4-22-99 David Fowler
scale: 1" = 100' DATE PROJECT MANAGER March 5, 1998
SERHOLD, CROSS & ETZEL, LTD.

REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286

DELINQUENT ACCOUNTS CERTIFICATION

I, BARBARA ANDREWS, CERTIFY UNDER OATH THAT THERE ARE NO DELINQUENT ACCOUNTS FOR ANY OTHER DEVELOPMENT WITH RESPECT TO ANY OF THE FOLLOWING DEVELOPMENTS OR DEVELOPMENT WITH RESPECT TO ANY OF THE PROPOSED DEVELOPMENTS OF A PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALF OF THE PROPOSED DEVELOPMENT.

THE ABOVE STATED PARAGRAPH ONLY PERTAINS TO ACCOUNTS DUE TO BALTIMORE COUNTY, MARYLAND.

Barbara J. Andrews 4-21-99 DATE

OVERALL ZONING HISTORY

CASE #40-394 5TH
COMBINED THE 170 A-2 LOT (4415 DUNSTAN LANE), THE 1639 A-2 LOT AND
LOT 1 LOCKSLEY IIIRD TO CREATE 1 LOT WHICH MAY NOT BE SUBDIVIDED.

CASE #83-249 5TH
AMENDED CASE #40-394 5TH
TO PERMIT SEPARATION OF 170 A-3 AND THE NON-DENSITY TRANSFER
OF 2,162 A-2 (LOT 1 LOCKSLEY IIIRD) AND REMAINING 4,334 A-2
TO 1460 DUNSTAN LANE.

CASE #83-250 5TH
NON-DENSITY TRANSFER OF LOT 1 LOCKSLEY IIIRD TO LOT 2 LOCKSLEY IIIRD

SOIL TYPES & LIMITATIONS

[illegible]

DENSITY CALCULATIONS

TOTAL GROSS AREA	49,087 AC.±
AREA IN ROAD RIGHT-OF-WAY	2,091 AC.±
NET AREA	46,996 AC.±

GROSS AREA IN R.C. 2	819 AC.±
LOTS PERMITTED IN R.C. 2	0
LOT 3 LOTS FULLY UTILIZED IN CONJUNCTANCE WITH LOT 2 (SEE ZONING HISTORY)	

GROSS AREA IN R.C. 5	40,066 AC.±
LOTS PERMITTED IN R.C. 5	0.067 X 40,066 = 2.71

NUMBER OF LOTS PROPOSED: 2

SINCE NEITHER A NEW CHANGED FROM R.C. 2 TO R.C. 5 NOR A CHANGED FROM R.C. 5 TO R.C. 2 IS STANDING THE IMPROVEMENTS ZONING PROCESS.

SYMBOLS LEGEND

- ▲ EXISTING WELL
 ○ EXISTING CULVIRT
 □ PROPOSED PERC TEST
 ● PROPOSED PERC TEST
 ● FAILED PERC TEST
 ■ PROPOSED VELL AREA
 ■ UNDERGROUND FUEL TANK
 CONTAINS
 SOLID LINE
 MOORS LINE
 LINE OF DISTURBANCE
 EXISTING PAVING
 PROPOSED PAVING
 ZONING LINE
 PROPOSED DWELLING
 EXISTING DWELLING

79
THEREFORE, IT IS ORDERED by the Zoning Commission/Hearing Officer for

Business County dba 77 day of December, 1998 that the development plan was approved, management plan, blended lands as Developer's Exhibit 2, be and is hereby APPROVED, subject to the terms and conditions expressed herein, and, as applicable, the terms and conditions of my prior Order dated October 6, 1998 and November 1, 1998.

LAWRENCE A. SCIMMUT
Zoning Commissions
for Endicott County

CONCERNED THAT THIS MATTER BE REMANDED TO THE HEARING OFFICE
for the sole purpose of additional review by DEPTA to cite the
specific reasons for the "substantial circumstances applicable to

estimating the variance from the 10-year
estimates as required by SEC 16-155(d)(1)

and it is further
 stated that, in all other respects, the decision of the
 hearing officers approving the development plan for Lehigh Valley
 Conserve, subject to the terms and conditions set forth therein, be
 and the same is hereby AFFIRMED subject to the following additional

Subsequent periodic studies of the Use of the development to be performed. Approved by HHS, for assess.

the impact of the development of the Atomic and Aquatic life chemicals, with detailed copies of such reports to be supplied to the Localities Conservancy Committee. The Localities Conservancy Committee, through the Council, will conduct an intensive development of the Atomic and Aquatic life chemicals, and the Localities Conservancy Committee will have been formed on the last day of the year.

CHIEF BOARD OF AFFAIRS

[illegible]

None persons, ORRDERED;
a survey GRANTED; and

2. The October 4, 1998 Housing Officer's Opinion and Development Plan Order (the "October 4, 1998 Opinion") is hereby **CLAUSED** and **AMENDED** as follows:

(A) The October 4, 1998 is not a final decision of the Housing Officer or a "final action" on the development plan, and accordingly, the Opinion is not subject to appeal as set forth in the

3. **ORDER.**

Mr. A. Herring on this development plan is not that
November 23, 1918 at 9:00 o'clock a.m., (which is a

provided in the October 6, 1990 Opinion), containing (if necessary) no December 1985 or 1987 letter, and (iii) a copy of the November 1985 letter, if it was accepted as to be adequate to DFTAL's environmental protection activity.

the final approval of the development plan to insure that it

will be an adverse impact on adjacent properties, including the adjacent residential property, all as provided in in Chapter 4, 1994 Ordinance.

conformant with Section 24-229 of the Baltimore County Code.

The last reference of the October 9, 1976 Citation (P.C. 17000000) issued of this document was to the Bureau of the California State Police, which is in accordance with Section 26.379 of the California Code of Regulations. The Bureau of the California State Police is hereby notified that this document is hereby deleted.

LAURENCE E. SUTCLIFF
 Sheriff, Office

10/10

WILLIAM D. SHAW-WORTH, JR., Editor
20-24, Chestnut Street, 19th Floor
Baltimore, MD 21201
(410) 374-4443

Charles McMillan Company, Company
Contractors, Inc., c/o of the Firm
(410) 374-4443

WILLIAM D. SHAW-WORTH, JR., Editor
20-24, Chestnut Street, 19th Floor
Baltimore, MD 21201
(410) 374-4443

Charles McMillan Company, Company
Contractors, Inc., c/o of the Firm
(410) 374-4443

IN RE: PETITION FOR SPECIAL HEARING

At end of Donerin Way, 1,375 ft. E
centerline of Manor Road
10th Election District
6th Councilmanic District
(Centerline of Donerin Way,
East of Manor Road)

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 05-231-SPH

Barbara Andrews
Petitioner

*
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at the centerline of Donerin Way, East of Manor Road in Baltimore County. Barbara Andrews, the Petitioner and legal owner of the property filed the Petition. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and Development Plan Order in Case No. CBA-99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require.

The property was posted with Notice of Hearing on December __, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on December __, 2004, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of

any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were submitted by the _____ dated _____, 2004, a copy of which is attached hereto and made a part hereto.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing and variance relief were _____ for the Petitioner. _____, Esquire represented the Petitioner. No Protestants or citizens attended the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The Petitioner is requesting to

Findings of Fact and Conclusions of Law

I find the request to

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be _____.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this ____ day of January, 2005, that the Petitioner's request for special hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R), to approve the elimination of the "additional condition" added to the Hearing Officer's Opinion and

Development Plan Order in Case No. CBA-99-101 and such additional nature of this case as presented at the time of the hearing on this Petition may require, be and is hereby _____.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

gm
12/28

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: December 1, 2004

RECEIVED

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

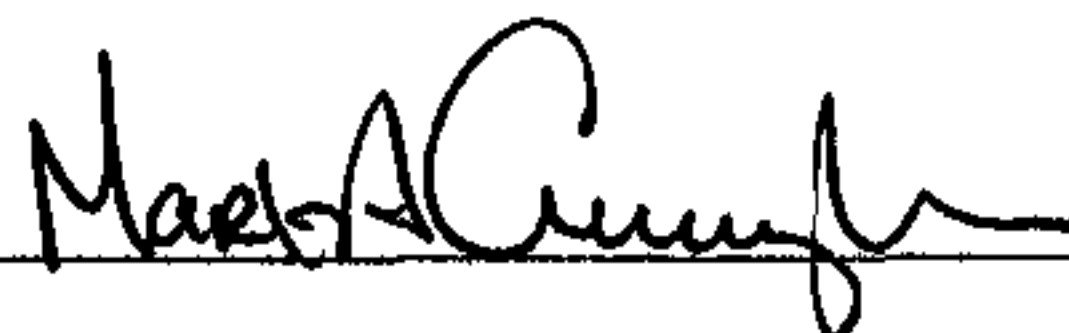
DEC 2 2004

ZONING COMMISSIONER

SUBJECT: Zoning Advisory Petition(s): Case(s) 5-231

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:



MAC/LL

GORDON • FEINBLATT

ROTHMAN, HOFFBERGER & HOLLANDER, LLC

RECEIVED

WILLIAM D. SHAUGHNESSY, JR.

410.576.4092

FAX 410.576.4246

wshaughnessy@gfirlaw.com

DEC 22 2004

ATTORNEYS AT LAW
233 EAST REDWOOD STREET
BALTIMORE, MARYLAND
21202-3332
410.576.4000
www.gfirlaw.com

December 20, 2004

ZONING COMMISSIONER

VIA FACSIMILE (410-887-5708)
AND FIRST CLASS MAIL

Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Case No. 05-231-SPH
Location: End of Donerin Way,
1,375 feet east of Manor Road
Petitioner: Barbara Andrews
Scheduled Hearing Date: December 28, 2004 at 10:00 a.m.

Dear Mr. Kotroco:

I have been contacted by several area residents who desire to oppose the relief requested by Ms. Andrews in the above hearing. Please enter my appearance as counsel for at least one protestant, Mr. William Malstrom (15 Edgarwood Court, Phoenix, Maryland 21131). I may enter my appearance on behalf of others.

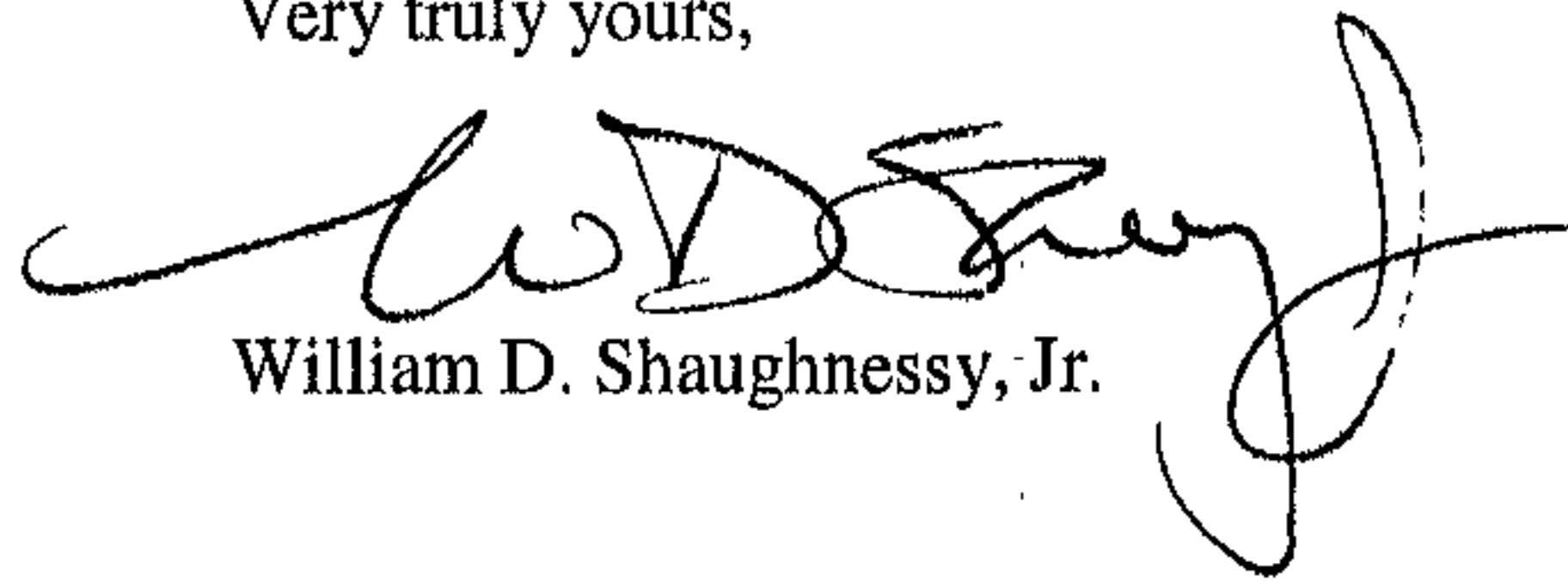
The special hearing in this matter seeks the elimination of a development condition imposed by the County Board of Appeals in Case No. CBA 99-101. I was the attorney for various of the protestants in that case before the Board of Appeals (CBA 99-101), as well as in the case before the Hearing Officer (98-319-SPH and X-354). I was unaware of the scheduled December 28, 2004 Special Hearing until several days ago when I was contacted by a local resident.

I respectfully request that the hearing scheduled for December 28, 2004 at 10:00 a.m. be postponed so that I might have the opportunity to discuss with my clients the modifications requested by the Petitioner, as well as review all documentation upon which the Petitioner bases the request, as well as evaluate the need for expert testimony at the hearing in this matter.

Accordingly, please postpone the currently scheduled hearing date and please have your office coordinate a mutually acceptable date for the hearing in this matter.

Thank you for your attention in this matter.

Very truly yours,


William D. Shaughnessy, Jr.

WDS/tgm

cc: Mr. William A. Malstrom
Howard R. Alderman, Esquire
Peter Max Zimmerman, Esquire
John V. Murphy, Deputy Zoning Commissioner

R
Case was postponed by
PADM

12/28

Call Jim
12/28/04
Case # 05-231-
SPH

IN THE MATTER OF
LOCKSLEY CONSERVE /PDM X-354
THE ESTATE OF ALBERT I.
DUNSTAN, OWNERS; BARBARA A.
ANDREWS -DEVELOPER : END OF
DONERIN WAY, E. OF MANOR ROAD
10TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
RE: DEVELOPMENT PLAN APPROVAL

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-99-101
* * * * *

O P I N I O N

This case comes to the Board of Appeals based on the Hearing Officer's Opinion and Development Plan Order dated October 6, 1998 in which the Developer's Exhibit No. 1 was conditionally approved, subject to restrictions, that Order being clarified and amended on November 5, 1998 (approved as to form and content by counsel for both the Developer and Protestants), with the final Hearing Officer's Opinion and Development Order being issued under date of December 11, 1998 as specified in the Order. It is the last date of December 11, 1998 that controls the appeal granted by Baltimore County Code (BCC) Section 26-209, "Appeals from Final Action on a Plan."

The Appellants filed a timely appeal with this Board on January 8, 1999. There were preliminary issues present relative to jurisdiction and the standing of the parties. Individual protestants and members of the Locksley Conserve community have appeared at the various Community Input Meetings held, at the Hearing Officer's hearings, and were present during oral argument. The Appellants properly filed their appeal Petition under Section 26-209(a) and have stated the grounds for their appeal, the alleged errors committed by the Hearing Officer, and why the final action appealed should be reversed or remanded, citing seven (7) reasons why the final Order should be reversed and remanded.

Under the provisions of the BCC, this Board is required to process Development cases in an expeditious timeframe, all of which have been satisfied. By law, the Board is required to have issued within 15 days following public deliberation its written Opinion and Order.

The Board held a public hearing on February 3, 1999. William B. Shaughnessy, Jr., Esquire, represented the Appellants /Protestants. Howard L. Alderman, Jr., Esquire, represented the Developer. The Board had the benefit of reviewing two excellent briefs submitted by both counsel subsequent to the Hearing Officer's Hearing of September 3, 1998, and an abundance of evidence submitted during the course of both hearings. The scope of review for this Board is prescribed in BCC Section 26-209. This Board, in a development plan, such as the instant case, serves a purely appellate role in which the standard of review is extremely narrow. This Board draws a parallel in reviewing the findings of the trier of fact to that which was found in People's Counsel v. Mangione, 85 Md.App. 738 (1991), wherein the general standard was defined as "whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgement for agency judgement."

Counsel for the Appellants has argued in a number of instances that certain approvals granted by the Hearing Officer /Zoning Commissioner were "arbitrary" and "capricious." Such allegations are not unexpected, and, for the most part, are standard in decisions rendered by administrative hearing officers. To act in an "arbitrary" manner reflects that the agency acted and based

their decision as a matter of preference or convenience, rather than by the intrinsic nature of something (in this case, the testimony and evidence produced at the hearing); or not being restrained in the exercise of authority. "Capricious" actions would tend to suggest a sudden, impulsive, and seemingly unmotivated notion or action. The Board finds none of these conditions present in the proceedings conducted by the Hearing Officer that extended over several days of lengthy public hearing, and the introduction of over 50 documents either into evidence or received for identification. A very strong burden exists on the part of the Appellants to establish by the weight of the evidence that the Hearing Officer's actions were so based and concluded. Such weight is not present in this case. The Board, however, has carefully reviewed the record to determine if any of the actions of the Hearing Officer were (1) unlawful; or (2) not supported by competent, material, and substantial evidence.

Counsel for the Developer did raise jurisdictional questions concerning the Appellants "Petition on Appeal," Section B(1) and (2). Section (1) deals with the Development Plan and Stormwater Management Plan approved by the Hearing Officer which exempted Lots 16 through 21 of the Development Plan approved as Petitioner's Exhibit No. 8 from the requirements of the stormwater management program. Section (2) references the approval of the Development Plan that permitted the Developer not to provide stormwater management for a "10-year storm" based on a variance /waiver granted by the Department of Environmental Protection & Resource Management (DEPRM). Mr. Alderman has asserted that this was not a waiver, but rather constituted a variance. Section 14-155 of the

BCC, "Environmental Protection and Resource Management Applicability," references both waivers and variances.

(c) Waivers. The director of the department of environmental protection and resource management or his designated representative may grant a waiver of the stormwater management requirements for individual developments, provided that the applicant submits a written request containing descriptions, drawings, calculations, and any other information necessary to evaluate the proposed waiver request.

The director of the department of environmental protection and resource management or his representative shall review comments from the department of public works and the county soil conservation district before approving or denying a waiver request. If there is a dispute, decisions of the director of the DEPRM shall be final and conclusive.

(d) Variances. The director of the department of environmental protection and resource management or his designated representative may grant a variance from any requirement of this article or design standards if there are exceptional circumstances applicable to the site. Exceptional circumstances must be such that strict adherence to the provisions of this article or design standards would result in unreasonable hardship or practical difficulty and not fulfill the intent of this article.

The applicant must submit a written request for variance to the department of environmental protection and resource management stating the specific variance sought and reasons for granting. The county will not grant a variance unless and until the applicant provides specific reasons justifying the variance.

The director of the department of environmental protection and resource management or his representative shall review comments from the department of public works and the county soil conservation district before approving or denying a variance request. If there is a dispute, decisions of the director of the department of environmental protection and resource management shall be final and conclusive.

(e) Stormwater management plan approved prior to permit. No grading or building permit shall be issued and no grading or building shall be conducted until the stormwater management plan for a proposed development has been approved by the department of environmental protection and resource management and the county soil conservation district or the proposed development has

been granted an exemption or waiver or variance. Plats may be recorded in advance of stormwater management approval if such recording is approved by the department of environmental protection and resource management, based upon sufficient evidence that stormwater management can be achieved in the location(s) designated on the plat.

Counsel for the Developer argues that under the provisions of the BCC, only DEPRM can grant waivers or variances under Article V "Stormwater Management." Since DEPRM had jurisdiction, and approved the waiver /variance in November 1998, any appeal from the Director of DEPRM had to be made within 30 days of that "final and conclusive" decision to this Board in accordance with the Rules of Practice and Procedure of the Board of Appeals /Rule 3 "Appeals":

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.

In order to properly assess the "Motion to Dismiss" -Section B(1) and (2) of the Appellants' appeal, it is necessary to reference the entire "stormwater management" issue identified under item (5) of the Hearing Officer's Order dated October 6, 1998 (pages 18 to 24). Substantial testimony had been received representing conflicting testimony on all sides, which included a representative of the stormwater management division of DEPRM. The Hearing Officer recognized his responsibilities under Section 26-203(d)(10) which states that "stormwater management areas supported by preliminary hydrology computations, proposed and existing storm drainage systems, and verification of a suitable outfall" must be shown on the plan. The Hearing Officer also recognized that Section 26-206(o)(2) was relevant which authorizes the Hearing Officer to condition or restrict approval of a Development Plan.

As stated in his Order, "Among the considerations specifically enumerated is a requirement that the Hearing Officer find that without the conditions, there will be an adverse impact on the community" (referencing Section 26-206[o][2] BCC) affecting the health, safety or welfare of the community. References are also made by the Hearing Officer relative to COMAR regulations, Title 14 of the Code (DEPRM).

The Hearing Officer recognized that taken piecemeal each side would take exception or utilize portions of existing law and regulations to advance their particular cause. The better approach was one which the Hearing Officer determined that the Development Plan under consideration was not the final approval, since Section 26-206(1) provides that:

All subsequent detailed development plans, such as final grading and sediment control plan, stormwater management plan, landscape plan, and record plats, shall be sealed and certified as being in accordance with the approved development plan. (Emphasis added.)

The Hearing Officer recognized the extraordinary uniqueness of the site and, in particular, the impact of the development on the very sensitive ecosystem that presently existed and that these issues had to be resolved before final approval could be granted. For that reason, the Hearing Officer remanded the matter, and had the Developer submit a stormwater management plan to DEPRM for review and approval. He left it to the best judgement of that department as to the nature and design of the plan.

Subsequent to the environmental protection analysis, another hearing was to be reconvened, taking into consideration the suggestions offered based on the subsequent DEPRM studies. As recited in the Hearing Officer's Order of October 6, 1998, "the

Plan (in whatever form) will be approved, subject to conditions /restrictions designed to manage stormwater runoff so as not to adversely impact the existing environmental system." The Board references item (6) of that conditional approval:

6) The Developer is hereby directed to submit such data, documentation, and/or plans as shall be required by DEPRM for the development of a storm water management plan. Such information shall enable DEPRM to assist the Developer in producing a storm water management plan that is in compliance with all appropriate governmental standards/regulations, and will prevent adverse impact on the adjacent environmental ecosystem. Such information shall be made available to William D. Shaughnessy, Esquire, as Counsel for the LCCC, Inc. Upon completion of its evaluation, DEPRM shall contact this Hearing Officer to arrange for the reconvening of a hearing, during which time testimony and evidence shall be received as is necessary for consideration of any restrictions/conditions which need be incorporated into the final approval of the development plan to insure that there will be no adverse impact on adjacent properties, including the abutting stream systems.

DEPRM conducted their review subsequent to the October 6, 1998 Order of the Hearing Officer, and granted a stormwater waiver /variance on November 24, 1998. A second hearing was conducted by the Hearing Officer on November 25, 1998, at which time the Hearing Officer heard testimony from the Developer, the Appellants, and DEPRM officials concerning the stormwater management plan and 10-year peak storm management requirements. As the Hearing Officer notes in footnote 2 (page 4) of his December 11, 1998 Order, "The Director of DEPRM, and not the Hearing Officer, is authorized to grant waivers and/or variances from the provisions of the stormwater management regulations (Section 14-155, BCC)." There is no question but that the waiver /variance issue is one that falls within the exclusive jurisdiction of the Director of DEPRM, and in the event of a dispute, decisions of the Director of DEPRM are

"final and conclusive" in both the cases of a waiver and a variance; and any appeal from that final decision was required to be filed within the 30-day period provided by the Board rules. Nevertheless, it is the responsibility of the Hearing Officer to finally determine that the stormwater management plan offered and submitted as part of Developer's Exhibit No. 8 is appropriate and, if so, the plan can be approved. In other words, DEPRM does make the final determination as to whether or not the waiver or variance can be granted; that decision must be appealed within 30 days to the Board of Appeals from the DEPRM decision. However, the Hearing Officer and not DEPRM determines the appropriateness of the total stormwater management plan offered, and if he deems it not acceptable, can reject it and require an alternative proposal. Therefore, the appeal to this Board is not on the waiver or variance as granted by DEPRM, but, rather, the appropriateness of the stormwater plan offered by the Developer. The Board concludes that the Developer's Motion to Dismiss must be denied as to Section B(1) and (2) of the Appellants' appeal, since that appeal was filed within the appropriate 30-day period.

Moving on, the Board will address each of the Appellants' items delineated in their Petition:

- (B)(1) The Hearing Officer erroneously and unlawfully approved the Development Plan and stormwater management plan which improperly exempts Lots 16 through 21 of the Development Plan approved as Petitioner's Exhibit 8 from the requirements of stormwater management.

The file and the voluminous data contained therein recognized that the stormwater management plans have always been a source of contention among the parties. The Appellants contend that the

adopted plan (Petitioner's Exhibit No. 8) improperly exempts Lots 16 through 21 of the Development Plan and is unlawful under Baltimore County Code and Maryland regulations. Appellants recite Section 14-155 of the BCC, "Environmental Protection and Resource Management -Applicability":

(a) Scope. No persons shall develop any land without having provided for appropriate stormwater management measures which control or manage runoff from such development, except as provided within this article.

(b) Exemptions. The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management:...

(4) Residential developments consisting of single-family houses, each on a lot of two (2) acres or greater; however, the applicant is responsible to convey all site runoff, in a nonerosive manner, to a suitable outfall:....

The Developer's original plan reflected 22 single residential lots, each over 2 acres in area. In preparing the Plan, the Developer used the R.C. 2 portion of the property and subdivided same into 12 smaller parcels; and, thereafter, piggy-backing these parcels to the rear of the R.C. 5 lots. Therefore, by adding this acreage to the R.C. 5 lots, the lots became over 2 acres in area, and in so doing, potentially qualifying for an exemption from stormwater management requirements. DEPRM may waive the applicability of stormwater management if each lot is over 2 acres in size. The Baltimore County Zoning Regulations (BCZR) do not allow a subdivision of the R.C. 2 zoned land as was contemplated by the Developer. That approach was abandoned. The approved Plan demonstrates the R.C. 2 section as a single lot with several lots less than 2 acres in area. The Plan was, accordingly, revised to show a stormwater management facility. The Appellants contend that

the current plans contain a situation where 30 percent of the lots have been exempted from any form of stormwater management and that the channelling effect permits the water to go directly into the tributary.

In a letter dated June 9, 1998 (Protestants' Exhibit No. 12), the Developer, through Mr. Mark S. Richmond, KCI Technologies, requested "an exemption from stormwater management for Drainage Area I (southwest of the proposed extension of Donerin Way), based on the fact that all lots in Area I were greater than 2 acres." Mr. Richmond stated that "water quality for Area I will be provided for several dwellings by sheet flow through grass and wooded areas. Drainage of Area II will require a stormwater pond which will provide quantity and quality control. All proposed public roadways will drain to the pond." The requested exemption was granted, although the Appellants allege that there is nothing in the record that DEPRM provided the certificate provided for under Section 14-155(b):

The director of the department of environmental protection and resource management shall certify such exemptions when requested in writing; when so certified, the exemption shall be final and conclusive. A separate written request is required if there are subsequent additions, extensions, or modifications to development receiving an exemption.

The Appellants contend that DEPRM, in exempting the stormwater requirements, based the decision for "drainage", Lots 17 through 21, citing Section 14-152 BCC --

Section 14-152

Drainage area means that area contributing runoff to a single point measured in a horizontal line which is enclosed by a ridge line.

-- rather than for "developments" consisting of single-family

homes, each on a lot of 2 acres or greater." Appellants contend that this was wrong, improper and illegal for DEPRM to construe an exemption applicable to an entire "development" as being applicable to a "drainage area"; and, as such, has a significant impact because the only water quality measures for runoff from impervious surfaces from these lots would be "short flow of the water before it reaches the western tributary."

The entire issue as it relates to stormwater management concerns was discussed at the Development Plan Conference held on April 8, 1998, in which the Developer is held responsible in addressing the requirements of BCC Title 14, Article V. Under "Site -Specific Comments" the following is referenced:

A. This project is exempt from the requirements to provide stormwater management since all lots are 2 acres or greater, as long as the runoff is directed to a suitable outfall. Signed L.A. Dreiger II, P.E.

Subsequently, in comments dated June 30, 1998, prepared for the Hearing Officer's hearing, under item (5), Site Specific Comments, Mr. Dreiger recites:

The Southwest Drainage Area I (southwest of Donerin Way) is exempt from the requirements to provide stormwater management as long as all lots are 2 acres or greater, and as long as the runoff is directed to a suitable outfall.

There is no question but that the Director of DEPRM has the authority to grant exemptions. The lots in question are in fact 2 acres or more; whether or not Mr. Dreiger's exemption is deemed "certified" when written as "Comments" is subject to argument. The Board must conclude, however, that in the absence of any formalized written "certification" used by DEPRM or required by the BCC, comments made by Mr. Dreiger must be construed as the

"certification." As the Hearing Officer noted on page 4 of his December 11, 1998 Order and Opinion, footnote 2: "The Director of DEPRM, not the Hearing Officer, is authorized to grant waivers and/or variances from the provisions of the stormwater management regulations (see Section 14-155 BCC)."

The entire stormwater management issues are covered in item (5) of the Hearing Officer's Order dated October 6, 1998. That Opinion and Order concedes that Mr. Lee Dreiger, an employee of the stormwater management division of DEPRM, was the individual assigned by DEPRM to review the stormwater management issues. It is acknowledged that the Locksley Conserve property is a very unique property. At the present time, only one home exists on the 49+ acres. The property does indeed contain deep slopes and woodlands as reflected in various photo exhibits admitted during the hearing and examined by the Board members. The single-most fascinating physical characteristic of the property is the stream system, a "U" shaped system that surrounds three sides of the property -- with three streams being Use III trout streams. These streams are all acknowledged as being healthy in that they presently support trout and other aquatic life (again, visually reflected in photographs and video viewed by the Board and submitted during the hearing).

The Hearing Officer acknowledged that the Developer's original plan called for 22 single lots, each containing over 2 acres. That plan was abandoned, and the plan before the Hearing Officer does contain several lots less than 2 acres in the area. Clearly the Code provides for an exemption from providing stormwater management if the development consists of single-family houses, each on lots

of 2 acres or greater. The current Development Plan shows the R.C. 2 land as a single lot, with several of the lots less than 2 acres in area. The Appellants contend that the language of Section 14-155 provides for an exemption of "developments (not drainage areas) consisting of single-family houses, each on a lot of two acres or greater"; and that the "development" in this case is the entire Locksley Conserve project, consisting of 21 lots; and that all 21 lots do not contain two acres or greater. Therefore, Mr. Dreiger improperly construed an exemption applicable to an entire "development" as being applicable to a "drainage area"; and in so doing, has had a negative impact since the only water quality measures for runoff from impervious surfaces from these lots would be "sheet flow of the water before it reaches the western boundary."

Admittedly, if one construes the entire development area constituting the Locksley Conserve Plan as consisting of all 21 lots, several are less than 2 acres in size. The current plan demonstrates the R.C. 2 land as a single lot. If the latter is the "development" the Section 14-155(b)(4) has a statutory exemption for the entire development from stormwater management. The intent of the legislation appears clear to this Board. When lots of 2 acres, or greater, are acknowledged on a plan, the developer is exempt from stormwater management -- but remains responsible for conveying all site runoff, in a non-erosive manner, to a suitable outfall.

As the Board has reviewed and considered the matter, the lots in Area I are greater than 2 acres; and the Developer did request an exemption from stormwater management, providing for sheet flow

via grass and wooded areas, relative to those lots with the exemption being granted by DEPRM by way of Mr. Dreiger's comments. Even assuming that the Appellants' contentions are correct as to the interpretation of "development," the exemption for the larger lots was granted, and decisions of the Director of DEPRM are final and conclusive.

(B)(2) & (B)(3) Stormwater Management Issues

As indicated in the Hearing Officer's Order of October 6, 1998, Section 26-203 of the BCC sets out with particularity those items which must be contained on the development plan. As also referenced in that Opinion and Order, subsection 26-203(d)(10) is particularly applicable to the issues at hand. That section states that "stormwater management areas supported by preliminary hydrology computations, proposed and existing storm drainage systems, and verification of a suitable outfall" must be shown on the plan. The Hearing Officer heard extensive testimony from all parties offering differing and conflicting opinions concerning the proposed stormwater management programs. The Hearing Officer's Opinion of October 6, 1998 states that "Mr. Dreiger unequivocally testified that the required information was on the plan. That is, he testified that the stormwater management areas were properly shown, that preliminary hydrology computations were provided, that proposed and existing storm drainage systems were shown, and that verification of suitable outfall was provided." Normally this would have been sufficient to finalize the matter as far as the Hearing Officer was concerned. However, the Hearing Officer took extraordinary steps to insure that the plan was legally sufficiently and, secondly, took the occasion to consider the

application of any restrictions or conditions which were appropriate to protect the sensitive integrity of the locale. He stressed in his October 1998 Opinion and Order the uniqueness of the property and the presence of the trout streams, and that it was his responsibility to also insure that the health of the adjoining streams was to be protected. To that end, since Mr. Dreiger candidly admitted that he had not had input from the environmental impact review division of DEPRM relative to thermal impact of the stormwater runoff on the aquatic resource, among other items, which had not yet been evaluated by him. The Hearing Officer took an unusual procedure to insure that the impact of the development on the sensitive ecosystem was evaluated, and particularly in connection with the requirements of Section 26-206(o)(2). He recognized that if those factors were not evaluated at the present time he could not impose any restrictions or conditions during Phase II. He also recognized that, in accordance with recent decisions rendered by the Court of Special Appeals, that Court looked with favor upon the passage from the Hearing Officer's Opinion in that case relative to the fact that the development process is indeed an "ongoing process," and the Hearing Officer's affirmation of the plan is just the first step (page 585, Monkton Preservation Association, et al v. Gaylord Brooks Realty Corp, 107 Md. App. 573 [1996]). To that end, the Developer was required to provide additional information which would permit the County and/or the Hearing Officer to evaluate the overall potential impact of this development on the environment and what conditions, if any, should be applied, recognizing that the plan was sufficient to pass the requirements of Section 26-203, but insufficient to allow a

reasonable finding as to the imposition of conditions and restrictions. To that end, condition #6 was imposed within the Order of October 6, 1998; and two additional hearings were held on November 25, 1998 and December 8, 1998, at which time both sides were given the opportunity to present their varying views along with additional comments that were submitted by DEPRM.

The second hearing held on November 25, 1998, dealt with documentation and/or plans as determined necessary by DEPRM for the development of the stormwater management plan. At the second hearing on November 25, 1998, the Hearing Officer heard from experts representing the Developer, DEPRM and, on December 8, 1998, the Appellants presented their case also with expert witnesses. The Hearing Officer had required the Developer to undertake significant additional studies to develop a stormwater management system that would insure that there would be no adverse impact on the three streams as a result of this development. The plan had been amended to eliminate one lot which would allow a larger area to accommodate the stormwater management facility. The Developer's expert, Mr. Mark S. Richmond of KCI Technologies, who actually devised the details and particulars of the stormwater management, testified along with Mr. Robert Sheesley, an environmental resource expert. Mr. Richmond testified and detailed the existing and proposed drainage areas on the site, how stormwater would be collected from the areas of impervious surface (i.e., roadways, driveway, roofs, etc.), and directed to a stormwater management reservation area which would be located adjacent to proposed lots 11 and 12. The stormwater would be managed by that facility through an infiltration system and the particulars of that system

were fully described at the hearing. He indicated that those areas included the volume and rate of discharge, the water temperatures, infiltration of storm water into the ground water system, the outfall design, and control of sedimentation.

In addition to the infiltration facility, Mr. Richmond also described how stormwater would be handled on other lots within the proposed subdivision by a sheetflow method. Basically, he stated that sufficient areas of these lots would be left undisturbed to permit water to flow from developed portions of the lots in a manner which would reduce the rate of flow and filter the water to protect the stream system.

The Board has reviewed the various documents in the file from the time of the first community input meeting held on November 5, 1997; the second community input meeting held on November 19, 1997; and the numerous development plan review comments from the various Baltimore County agencies. These suggest that while a myriad of issues were present which were matters of concern to the Appellants, the primary issues involved the stormwater management proposal, and a genuine and sincere effort to insure that any development of the Locksley Conserve site be undertaken so as to have the least possible detrimental effect/impact on the community and the sensitive ecosystem that engulfed the Locksley Conserve area on three sides. To that end, Appellants offered considerable testimony and evidence referencing the sensitivity of the tributaries, and the utmost need and caution to have sufficient stormwater management practices in effect that would minimize any harm to the trout population.

Mr. Charles Gougeon, fisheries biologist with the Maryland

Department of Natural Resources, testified at length at the original hearing. The Board members individually reviewed a video tape (without sound) featuring Mr. Gougeon's taped hearing testimony concerning the environment and his overview of the proposed development, and how it would affect the ecosystem. The Board acknowledges that the exhibit (Protestants' No. 6) was objected to by counsel for the Developer, but acknowledges from a weight standpoint that it was helpful in presenting the clear quality of the present streams and the general topography of the area in proximity to the streams.

Mr. Lee Dreiger, the DEPRM official in charge of the development from the standpoint of DEPRM also testified. He opined that he had reviewed the preliminary hydrology data and the delineation and computation of drainage areas for post-development conditions as reflected on the development plan, proposed storm drainage systems, and that he had verified the suitability of the outfall proposal. It was his opinion that the scheme proposed would not have an adverse impact on the adjacent properties, streams, or wetlands. It was his professional opinion that the stormwater approach that had been prepared on Locksley Conserve would be developed to manage both the quantity and quality, all the stormwater from the proposed extension of Donerin Way, irrespective of the existing, pre-developed grades and drainage divide. Mr. Dreiger also acknowledged that certain factors, but not necessarily limited thereto, would also be investigated, and indicated that during the Phase II design stage these would also be considered by DEPRM.

1. Hierarchy of types of stormwater management

- facilities;
- 2. Water quality measures /considerations;
- 3. Thermal aspects of stormwater;
- 4. Removal of pollutants;
- 5. Class III trout stream considerations;
- 6. Time of concentrated paths;
- 7. Potential impacts of stormwater on aquatic life;
- 8. Soil characteristics on reservation area; and
- 9. Final design of stormwater management facility.

However, there were areas of deficiency in connection with Mr. Dreiger's testimony that obviously caused concern to the Hearing Officer. These involved what constituted the velocity of any outfall, and the results of any velocity computations. Additionally, no consideration had been given concerning any thermal impacts for a stormwater management facility that could have an impact on the three streams. It was obvious to the Hearing Officer that the Developer had not presented DEPRM with sufficient data which would analyze the effect of outfall from the stormwater reservation upon the Use III trout streams of the eastern tributary. The Developer had not provided any studies regarding pollutant impacts of outfalling water from the stormwater management reservation into the eastern tributary. It is unquestioned that the lack of documentation led the Hearing Officer to take the unusual step of requiring the Developer to provide information that would permit either the County or the Hearing Officer to evaluate the potential impact of the development on the environment and what conditions, if any, should be applied, and particularly as they related to Section 26-206(o)(2):

In approving a plan, the hearing officer may impose such conditions, as may be deemed necessary or advisable, based upon such factual findings as may be supported by evidence for the protection of surrounding and neighboring properties. Such conditions may be imposed if (1) - (7).

Accordingly, condition 6 recited previously was imposed as part of the Hearing Officer's conditional approval of October 6, 1998. At the initial hearing, the Hearing Officer also heard direct testimony from Philip Der, a professional engineer; Richard Klein, an expert qualified in the field of evaluation of development impact on aquatic resources; and Robert Sheesley, a qualified and recognized environmental scientist. All three gentlemen offered testimony pertinent to the appropriateness of approval of the stormwater management facilities outlined in the development plan.

There was a wide divergence of opinion concerning the stormwater management systems within the Locksley Conserve area. The Hearing Officer acknowledged in his October 6, 1998 conditional opinion that "both sides attempted to characterize the law or use portions thereof to their advantage." Obviously, counsel on both sides have an obligation to present the law in a light most favorable to their varying positions. In analyzing those laws and statutes, however, the Hearing Officer wisely acknowledged that the ultimate intent and purpose of such legislation is "to insure that development can reasonably be completed without adverse impact on a sensitive environmental ecosystem."

The Board, in summary, does not conclude that the Hearing Officer acted in an unlawful manner in approving the subject plan exempting lots 16-21 of the Development Plan. The record clearly reflects that the Hearing Officer considered the exemption granted

by DEPRM; and considered the gravity and weight of the testimony of the DEPRM representative, Mr. Dreiger; and that of Mr. Richmond and Mr. Sheesley to be most persuasive in satisfying his questions concerning the impact of the proposed stormwater management program advocated for the larger lots via the sheet flow method. In reaching his decision, the Hearing Officer recognized that some of the lots were less than 2 acres in area; however, he rationalized that the site conditions testified to by the Developer's engineer and experts were considerations which led him to believe that the sheet flow method was appropriate, taking into account the fact that a number of the lots consisted of unbuildable sections of forest and heavy ground cover, which would assist in handling the runoff from the development. The Hearing Officer noted that the unusual nature of the site required an "innovative" approach to address the stormwater management issues. This Board is not permitted to substitute its judgement for that of the Hearing Officer. Clearly, the Hearing Officer acted in a judicious manner in approving the development plan, and we can find no merit relative to the issues raised in the Appellants' appeal.

The Appellants also allege that there was no evidence of any exceptional circumstances which would justify a deviation from the requirement of managing for a "10-year storm"; and that the Hearing Officer's approval of such an exemption was unlawful, arbitrary, capricious, and not supported by competent, material and substantive evidence. As was indicated in the Developer's Post-Hearing Memorandum, the Director of DEPRM does have the latitude to make judgement calls based on individual circumstances presented in any particular case, which must be made, however in a manner so as

not to obviate the intent of the regulation -- referencing the testimony of Mr. Robert Sheesley, a former Director of DEPRM for Baltimore County [his remarks in connection with BCC 14-155(c) and (d)]. Subsequent to the Hearing Officer's Order of October 6, 1998, additional inquiries were made to DEPRM by the Developer concerning the 10-year stormwater management variance. Copies of written correspondence between the Developer and DEPRM have been reviewed by the Board, having been introduced into evidence at the November 25, 1998 hearing. A review of the correspondence by the Board reflects the letter by Mr. Mark S. Richmond, P.E., Senior Associate, KCI Technologies to Mr. Lee Dreiger, P.E., Baltimore County, Department of Environmental Protection & Resource Management, in connection with a November 18, 1998 meeting with DEPRM representatives in which the concerns of DEPRM were expressed to the Developer. Some of these concerns were in the areas of temperature, water quality, infiltration, pollutant removal, and suitable outfalls. The letter and plans attached thereto expressed in detail the KCI proposal dated November 23, 1998 relative to each of the topics of concern to DEPRM (Developer's Exhibit No. 13).

The Board notes the comments made by Mr. Richmond concerning the question of "storm magnitude." Mr. Richmond indicates that "under the State and County's stormwater management goals and objectives, smaller magnitude/more frequent storms up to and including the 2-year storm are considered as important for water quality control and streambank erosion control. Larger magnitude/less frequent storms, including the 10-year and 100-year storms, are more critical for flood control. We [KCI], therefore, recommend that the requirement providing peak management be waived

for the 10-year storm. In light of such a waiver, KCI will still provide 2-year peak management. In order to enhance water quality treatment, we [KCI] will infiltrate the first 1-inch to 1-1/2 inches of runoff from additional impervious areas draining to the pond which is two to three times greater than the State and County's normal requirement of treating the first 1/2 inch of runoff from additional impervious areas." The plans attached to the letter reflect the flow rate for the 2, 20 and 100-year storms for the entire Locksley Conserve site. The other areas of concern (temperature, water quality, infiltration, pollutant removal and suitable outfalls) are also discussed in considerable detail in this letter.

As to the 10-year peak management, KCI requested the exemption with the condition that between the first inch and 1-1/2 inches of runoff from the added impervious area to the stormwater management pond receive water quality treatment, with KCI working closely with the County during the final design to develop the appropriate detailed computations, plans and construction details to assure that the system meets the County's design criteria and goals.

Mr. Thomas L. Vidmar, P.E., Resource Management and Engineering Services of DEPRM, responded to Mr. Richmond's inquiry the next day, on November 24, 1998 (Developer's Exhibit No. 14) in which the KCI request for variance under Section 14-155(c)(1) had been evaluated by DEPRM:

- (1) The proposed development will not generate more than a ten-percent increase in the two-year predevelopment peak discharge rate and will not cause an adverse impact on the receiving wetland, water-course or water body, or....

Mr. Vidmar correctly states in his letter of November 24, 1998:

The Baltimore County Code Section 14-155(c)(1) of Article V 14-155(d) Variance states that the director of the Department of Environmental Protection and Resource Management or his designated representative may grant a variance from any requirement of this article or design standards if there are exceptional circumstances applicable to the site. Further, it states if there is a dispute, decisions of the director of the Department of Environmental Protection and Resource Management shall be final and conclusive.

That letter proceeds to grant the variance based on the KCI proposal to provide water quality management, mitigation of thermal impacts, and groundwater recharge in excess of the minimum requirements. Given the nature of the watershed, DEPRM concurred that it was appropriate to implement this type of storage. They indicated that elimination of the 10-year requirement allows the storage volume to be utilized for this purpose. DEPRM accordingly granted the 10-year quantity management variance.

Additionally, on November 24, 1998, the day of the hearing dedicated to stormwater management concerns, Patricia M. Farr, Supervisor, Environmental Impact Review, wrote to Mr. Richmond expressing her Department's concerns being "adequately addressed with the proposed design in the areas of (1) temperature, (2) outfall, (3) sedimentation, (4) location of the proposed pond, outfalls and grading."

This Board accepts the conclusions reached by the Hearing Officer relative to the stormwater management proposal submitted by the Developer's engineers and experts and reviewed in great detail by the various representatives of DEPRM. As stated in his Opinion and Order of December 11, 1998, the Hearing Officer placed great reliance upon the testimony of the representatives of DEPRM, acknowledging that their "clear and convincing" testimony was that

the stormwater management system was appropriate for the site.

The Board is not permitted to substitute its judgement for that of the Hearing Officer who explored the issue extensively and meticulously. The Board also acknowledges that the Director of DEPRM has the final and conclusive decision in the matter of variance granting. However, the Appellants do raise the legitimate question of the "exceptional circumstances applicable to the site" that required the variance. Reference has been made to Mr. Vidmar's letter of November 24, 1998 to KCI; and his acknowledgement of the statutory requirements of the "exceptional circumstances." However, the Board does not note any rationale in the letter that acknowledges the presence of "exceptional circumstances." No doubt they do exist because of the previously acknowledged "uniqueness" of the site. Nevertheless, as the Board is required, by law, to state its specific reasons for any variance granted, so also is DEPRM required to state with specificity the "exceptional circumstances" that exist in order to satisfy any level of appeal that lies to the Appellants and may be questioned by a higher reviewing body. For that reason, we believe it appropriate and proper to remand the plan back to the Hearing Officer to request a review by DEPRM as to the "exceptional circumstances" that exist, not questioning the validity of the variance, but only if the special circumstances would require the Hearing Officer to include any additional conditions that "without the condition, there would be an adverse impact on the health, safety or welfare of the community." [Section 26-206(o)(2).] Indeed, none may be required, but since the Appellants have raised the issue, it is one that requires further determination to satisfy

the requirements of the Code.

((B)(4) The issue regarding a boundary dispute

The Appellants reference the cross-examination of Mr. Bruce Doak, a Civil Engineer with the firm of Gerhold, Cross and Etzel. Mr. Doak presented the Development Plan at the hearing on behalf of the Developer. Since, in his opinion, the Plan complied with the applicable BCC provisions, he placed his seal on the Plan. During cross-examination, Mr. Doak acknowledged a boundary "discrepancy." While the actual Development Plan reflects the boundary lines of the Dunstan Property (which will be developed as Locksley Conserve), Mr. Doak testified that his on-the-ground survey indicated that the Western property line from the deed survey would extend into the properties to the west in the Manor Glen subdivision. In preparing the Plan, Mr. Doak did not show the boundary discrepancy; and he utilized the easement boundary of the Manor Glen subdivision as the western-most boundary for the Locksley Conserve property. In so doing, Mr. Doak asserted that, by his survey, the Dunstan Property was larger than that shown in the Development Plan and indicated a "sliver" of land along the western boundary of the Locksley Conserve which would encroach into the platted lots of Manor Glen.

Section 26-203(b)(6) recites:

The Plan shall contain the following background information:

(c) Ownership of the subject property and adjacent properties, including deed references and tax account number, as shown on the most recent tax maps as published by the department of assessments and taxation, on the basis of more current information if the same is available to the applicant....

Mr. Doak considered the "in-the-field," "on-the-site" boundary

as constituting "the basis of more current information if the same is available to the applicant." In that Mr. Doak did not depict the boundary dispute showing an alleged encroachment onto the adjoining lots in Manor Glen, and that he merely used the Manor Glen boundary, the Appellants allege that he failed to comply with the provisions of the BCC; and the Plan should be denied.

The Appellants strongly contend that it is improper to approve a development plan with an acknowledged boundary dispute. To approve such a plan provides the owners in the adjacent Manor Glen community with uncertainties relative to their boundaries. Mr. Doak has acknowledged that the density calculation of the property, the Development Plan, and its density were all based upon the recorded boundary of Manor Glen, and as presently reflected on the maps published for the State Department of Assessments and Taxation, irrespective of the overlap, which essentially was to the detriment of the Developer. The Developer, Ms. Andrews, had also previously acknowledged, through her counsel, that if she finally closes on her purchase of the subject property (assuming the development plan is approved), and if a plat consistent therewith is recorded, that she (the contract purchaser) would be willing to quit-claim any interest that she might have, based on the overlap described by Mr. Doak, to the adjoining lot owners -- provided that said owners drew up the required papers for her execution in proper form, and acceptable manner, and paid all costs associated with the transfer and recordation of the legal instruments.

The Hearing Officer recognized the concern of the Appellants. His authority is limited by the BCC, and the specific development regulations specified therein. He has been granted no authority to

determine boundaries or resolve quiet issues of title, nor has that authority been granted to this Board. That authority is given to the Circuit Court of Baltimore County exclusively. The Hearing Officer conceded that an accurate representation of the development plan is necessary to determine site acreage, which ultimately decides the number of units permitted on-site. Acreage accuracy is necessary for elements of maximum development, zoning setbacks and property lines. The Development Plan submitted locates the boundary as far distanced from dwellings on the lots in Manor Glen as that line could arguably be located. The Developer has not attempted to use acreage in disputed ownership to support density in the development plan. In fact, as acknowledged by the Hearing Officer, by adopting a conservative approach, the property's acreage was, in fact, reduced. The required setbacks which need to be maintained from the property line provide an increased distance from existing Manor Glen dwellings. This Board concurs with the decision rendered by the Hearing Officer's rationale that had the Developer attempted to use acreage in "disputed ownership" to support density in the development, the plan would not have been approved; and if the Developer had attempted to avoid setback variances by locating the property line at a disputed location, the plan would fail. The Board also concurs with the processes of the Hearing Officer recognizing that any title dispute is a legitimate issue to be resolved among the parties. However, we do not agree with the alternate approach suggested by the Appellants, that the Developer initiate a quiet title action to ascertain with finality the actual boundary. The issue, while it may appear to be of considerable relevancy to the Appellants, in fact does not

represent a material factor in this Board's review of the decision of the Hearing Officer. It is, as the Hearing Officer stated, "insignificant as to reaching a conclusion of the propriety of the plan." As the Hearing Officer further concluded, if the subject property is ultimately to be determined to be larger than shown, and the property line further to the west, the proposed lots will be larger, the provided setbacks greater, and ultimately less density. In so reaching his conclusions on this particular matter, the Board finds that the Hearing Officer acted within the spirit and intent of the development regulations, and no harm has been rendered to the Appellants that would render the development plan insufficient or to provide for its disapproval by the Hearing Officer.

(B)(5) Adjacent trout streams /stormwater management

The Appellants had requested that the Hearing Officer impose certain restrictions and conditions in his approval of the Development Plan for Locksley Conserve area based on testimony and argument that references possible detrimental impacts on the adjacent Use III trout streams as well as defective stormwater management practices.

The Board has considered the arguments suggested by the Appellants. The issues presented by the Appellants are not new ones. They were the subject of considerable testimony and evidence produced during several long days of public hearing. Each opposing side had ample opportunity to offer their professional experts in the question of total development of the site, and the appropriateness of lot location. The Hearing Officer was aware of all the areas suggested by the Appellants. As previously stated,

an initial Hearing Officer's hearing had preliminarily been set for May 1, 1998. The original plan submitted by the Developer called for a development plan accompanied by a request for zoning relief (Petition for Variance, Special Exception /Special Hearing). A continuance was requested at that time to permit County agencies to conclude their review of the development plan submitted, and to allow the Developer time to reconsider its plan and the special exception /special hearing request. Subsequently, a revised plan was submitted in which there was a reconfiguration of the lots.

On June 30, 1998, the new Development Plan, as revised, called for reservation of an area for stormwater management and proposed that Lot #2 as previously defined be divided in a lot of roughly 2.115 acres, and a non-density parcel "A" (zoned R.C. 5) of approximately 0.51 acre. A development plan conference as required by BCC 26-205(b)(1) had been held. The prior special hearing request had been withdrawn. The red-lined changes required by comments received by the Developer at the development plan conference and outstanding comments from the office of zoning with respect to Parcel "A" were noted, and as the Hearing Officer poled each County agency represented, no other County issues were considered open. The position taken by the reporting County agencies was considered with the various County comments recommending approval of the Plan. Other than the described creation of Parcel "A," there were no other outstanding issues. Subsequently, the concerns of the community were also heard.

As reflected in the Hearing Officer's Order, the revised plan called for the elimination of one lot in that the developed area would now consist of 21 lots. As to the development of lots 13, 14

and 15, the Board is aware of the proximity of these lots to the streams. This change in itself was to allow a larger area to accommodate the stormwater management facility. A stormwater management reservation area was to be located adjacent to lots 11 and 12, with the stormwater managed by that facility via an infiltration system. The Hearing Officer heard detailed and extensive testimony from Richard Richmond and Robert Sheesley relative to the infiltration system and the sheet flow method. It was the Hearing Officer's conclusion, based on the detailed testimony of these gentlemen and the testimony of Lee Dreiger and Patricia Farr representing DEPRM that the Developer had adequately addressed all the stormwater management issues. There was no substantial evidence or testimony produced that would indicate any detrimental effect by the erection of dwellings on lots 13, 14 and 15, nor would such building adversely affect the trout streams.

As to subsection 3(d)(i), (ii), (iii), (iv), and (v) of Item V in the Appellants' appeal, there was more than sufficient testimony and evidence produced at the hearings to lead the Hearing Officer to conclude that the stormwater management proposals resubmitted at the second hearing by the Developer would adequately protect the environment, and the integrity of the streams and trout therein. The Board has taken special note that the Hearing Officer took the unusual step of moving into Phase II to satisfy any doubts that he may have had concerning any deficiencies in the development plan submitted by the Developer. During the original hearing, Mr. Dreiger had testified that certain additional factors would be investigated and evaluated by DEPRM during the Phase II stage; and, again, it is necessary for the Board to recite these:

- ~ Hierarchy of types of stormwater management facilities
- ~ Water quality measures /considerations
- ~ Thermal aspects of stormwater
- ~ Removal of pollutants from stormwater
- ~ Class III trout stream considerations
- ~ Time of concentration paths
- ~ Potential impacts of stormwater on aquatic life
- ~ Soil characteristics of reservation area
- ~ Final design of stormwater management facility

Reference must also be made relative to condition #6 of the Hearing Officer's Order of October 6, 1998, where the Developer was directed to submit "such data, documentation, and/or plans as shall be required by DEPRM for the development of a stormwater management plan." That plan was also to take into consideration "all appropriate governmental standards/regulations and consider a plan that would prevent adverse impact in the adjacent environmental ecosystems." Subsequent to the October 8, 1998 hearing, two additional days of testimony and evidence were received on November 25, 1998 and December 8, 1998. Expert testimony was received from Mark S. Richmond of KCI Technologies, Inc., who had compiled the specifics and details of the stormwater management plan; Robert Sheesley, an environmental resources expert, and former Director of DEPRM in Baltimore County; along with Lee Dreiger and Patricia Farr of Baltimore County DEPRM. On December 8, 1998, the Hearing Officer heard from Richard Klein and Philip Der, P. E., who expressed concern over the lots utilizing the sheet flow method of stormwater management control.

The Board must also cite for the record that at prior

hearings, the Hearing Officer had heard extensive testimony from Charles Gougeon, an expert in fisheries and aquatic systems, and Richard Klein, an expert in the area of evaluating developmental impact on aquatic resources, both appearing as witnesses for the Appellants. Having reviewed in-depth the post-hearing memorandum briefs submitted by both counsel subsequent to the original hearing, and the Hearing Officer's Order of December 19, 1998, this Board is sufficiently satisfied that the Hearing Officer considered the impact of the development of lots 13, 14, and 15; and also that the supplemental documentation submitted by the Developer in accordance with condition #6 of the Hearing Officer's conditional Order was sufficient to convince the Hearing Officer that there would not be any significant thermal impact upon the aquatic life or breeding practices of the trout. Additionally, sufficient data had been present, as required by the October 8, 1998 Conditional Order, to satisfy the Hearing Officer that drainage, outfall, and hydrology studies had been conducted to satisfy the officials of DEPRM charged with the responsibility of environmental protection that the development plan was satisfactory from their standpoint. Similarly, studies were undertaken to alleviate any concern or fears relative to lots 16 through 21, and the stormwater management exemption granted by DEPRM and that the infiltration system, as proposed, was adequate to provide for effective stormwater management within the development.

The Board in its analysis of the proceedings has taken significant note of the testimony of Mr. Sheesley who testified at the original hearing that "rather than a single method being used for management of storm water on the property, a multi-faceted

approach is required." Mr. Sheesley opined that the combination of available stormwater management methods, recommended for final design that are based on site-specific conditions, together with on-site "BMPs" will insure that all storm water leaving the property will meet all applicable laws, regulations, standards, and guidelines for factors including, but not limited to, temperature, pollutants, erosions, sediment and rate of flow before its ultimate entry into a Class III trout stream.

While Mr. Sheesley opined that the final design of the stormwater management facility, including all relevant factors necessary for the protection of aquatic and related resources, would be accomplished if the development plan was approved during the Phase II process of the development regulations, again it should be noted that the Hearing Officer was not totally satisfied with this statement and required that a substantial number of the Phase II processes be completed by the Developer and submitted to DEPRM prior to final approval of his Conditional Order.

The Board must conclude that the Hearing Officer acted in a responsible, lawful and indeed prudent manner in conducting a most thorough review of all facets of the stormwater management proposals, and considered the objections raised by the Appellants. The Hearing Officer's ultimate goal was to insure that the presently existing quality of the stream systems and the trout and aquatic life residing therein would be both protected and maintained, and both of his Orders represent the thoughtfulness and considerable attention that was provided in order to maintain the integrity of the environment. The Board, however, is concerned that no conditions were imposed that would ameliorate the concern

of the Appellants relative to the maintenance of the stormwater management facility installed in the Locksley Conserve site. The Board notes the testimony of Mr. Gougeon and his analysis that the tributary exhibited the presence of both "young of year" and "adult trout species," even with the present 50 plus homes and several macadam roadways located in the adjoining Manor Glen community, which had no management control of stormwater, either for quality or quantity purposes. The uniqueness of the site, however, requires consideration on the part of the Board to impose a condition that will require the Developer to monitor the runoff and any environmental changes/ caused by the future development of the 21 lots to insure that the stormwater management practices approved are, in fact, performing as anticipated without any resulting injury or detriment to the streams. To that end, the Board will require as the development progresses that the Developer conduct periodic studies as prescribed by DEPRM and to monitor the effects of the development process up to and including completion and sale of the 21 lots with reports being submitted to counsel for the Appellants.

- (B)(6) Hearing Examiner erred when he failed to require that the Developer install a cul-de-sac at the terminus of the proposed extension of Donerin Way to address concerns raised by citizens and the Chief of the Jacksonville Volunteer Fire Company regarding turn-around areas for fire apparatus.

The Appellants reference comments made by Claude C. Gambill, Chief of the Jacksonville Volunteer Fire Company, conceded by counsel to be an expert witness in matters dealing with fire safety and control. The Chief had attended the two separate community input meetings and had submitted written comments relative to the

concept plan at one of the meetings. It was Chief Gambill's opinion that a cul-de-sac should be conditioned as part of the development plan approval at the termination of Donerin Way that would permit fire equipment to negotiate a turn in that vicinity. The Chief had acknowledged that while "T" turn-arounds are permitted by law, it has been his general experience that such situations are difficult for large vehicles to negotiate and turn, and thus such conditions present significant and hazardous conditions for homes in any rural development. While permitted, these "T" turn-arounds conflict with fire-fighting efforts that would insure greater public safety and welfare, in particular the efforts of the Jacksonville Fire Company to perform the duties and responsibilities to which they are committed to the community.

Chief Gambill also expressed his opinion that the requirement of such a cul-de-sac would also provide an adequate landing /line staging area for the Maryland State Police (Medivac) helicopter. Chief Gambill did acknowledge that comments made by the Baltimore County Fire Department in their official review comments which they are required to do as one of the reviewing agencies under Section 26-205(a)(6) of the development regulations that either a cul-de-sac or "T" turn-around was required under the development regulations. The Chief also testified that a cul-de-sac at the end of the proposed Dunstan Court would serve as an adequate landing area for a Medivac helicopter.

The Hearing Officer in his October 6, 1998 conditional Order acknowledges the substantial testimony that was offered in the area of fire suppression and these were taken into consideration as he reached his final conclusion that the proposed "T" turn-around did

satisfy the standards imposed by Baltimore County, and was appropriate for approval within the content of the development plan. The Board has no basis upon which to disagree with the conclusions reached by the Hearing Officer.

Item 7. The Hearing Examiner erred when he failed to address Protestants' safety concerns regarding traffic generated by the proposed development, and in failing to require that the Developer install a secondary access to the proposed development through Dunstan Way to address concerns raised by citizens regarding traffic through the existing Manor Glen subdivision.

Whenever new development is contemplated in Baltimore County, increased traffic and safety issues are of concern to the residents of the existing communities. The building of 21 homes on lots within the contemplated Locksley Conserve area of 49+ acres also poses such genuine concern to the residents of Manor Glen. The Hearing Officer heard testimony from Chief Gambill as to what he perceived to be limited sight distances on Donerin Way; and at the intersection of Manor Road and Stansbury Mill. In addition, a number of residents also testified at the original hearing and community input meetings concerning the adequacy of existing roads and limited sight distances.

The Board members reviewed the video tape produced by David Nudelman, who resides on Donerin Way (without sound), and reviewed his testimony in connection with the video. The tape was helpful in each Board member's individual assessment of the existing roadways, and intersections providing access to and from the development. While no official traffic study was made, and none was required, the Protestants have noted that the Developer has suggested 10 round-trips per family unit for each of the lots, for a total of 210 average daily trips. These would probably be

maximized during the morning work rush-hours, with "housekeeping" trips during the off hours. The Board does not considered that number unreasonable or burdensome on the existing roadways or contemplated access routes. While a number of residents have opined concerning the traffic, lack of sidewalks on Donerin Way, some limited sight areas, and difficulties getting on to Jarrettsville Pike during work hours, the Board also recognizes that the Hearing Officer took these matters into consideration when approving the total development plan. The Board notes that the presently existing roads on Manor Glen are public roads, all off-site, as far as 2 to 3 miles away. The Hearing Officer took the unusual step of actually driving the areas affected; and describes his trip within the context of his official opinion acknowledging that the road system was rural in character and a single lane in each direction. He also acknowledged that the intersection of Stansbury Mill and Jarrettsville Pike was somewhat difficult, noting that while it was a problem for the area at large the intersection was a significant distance from the Locksley Conserve area. The Board members also examined a number of photographs (Developer 6A, 6B, 6C and 6D) in assessing the Hearing Officer's decision.

At the hearings, the Developer had noted in his post-hearing memorandum brief the fact that none of the Protestants had complained to or otherwise contacted any Baltimore County official or representative concerning the conditions some believed to be excessive by reasons of the contemplated development. The testimony and evidence produced by both sides, and alternative proposal by the Protestants, was taken into consideration by the

that complies with these development regulations and applicable policies, rules and regulations promulgated pursuant to Section 2-416 et. seq. of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions and safeguards set forth therein....

The Hearing Officer is ultimately charged with the responsibility of applying the definitive standards, procedures and regulations required by the Code.

The Hearing Officer acts as an independent authority. In his examination, after hearing the testimony and evidence, he must concluded that a plan is in compliance with existing County requirements and standards. Personal preference is not an option. His judgement may be a factor, as long as it is reasonable, lawful and applicable. This Board as a reviewing body similarly cannot substitute its opinion or consensus for that of the Hearing Officer. Where adequate information exists to support the findings of the Hearing Officer, that decision must be sustained by this Board.

The Board, however, is vested with the authority to impose conditions that may have been overlooked by the Hearing Officer, and remand the matter if any additional matters need to be resolved in order to finalize the development plan.

For the reasons so stated, this Board will affirm the Hearing Officer's Opinion and Order dated October 6, 1999 and December 11, 1999, subject to the following additional conditions and shall remand for additional support of the 10-year stormwater management variance as required by the BCC.

O R D E R

IT IS THEREFORE THIS 11th day of March, 1999 by the

County Board of Appeals of Baltimore County

ORDERED that this matter be REMANDED to the Hearing Officer for the sole purpose of additional review by DEPRM to cite the specific reasons for the "exceptional circumstances applicable to the site" that existed in granting the variance from the 10-year stormwater management requirements as required by BCC 14-155(d); and it is further

ORDERED that, in all other respects, the decision of the Hearing Officer approving the Development Plan for Locksley Conserve, subject to the terms and conditions set forth therein, be and the same is hereby AFFIRMED subject to the following additional condition:

The Developer shall conduct periodic studies of the Use III trout streams within the development to be performed by an independent source, approved by DEPRM, to assess the impact of the development on the streams and aquatic life therein, with detailed copies of such reports to be supplied to the Locksley Conserve Community Committee, Inc., through its counsel of record, such studies to be conducted at intervals determined by DEPRM until development is completed; and the final use and occupancy permits have been granted on the last lot and house sold.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Charles L. Marks, Chairman


Thomas P. Melvin


Lawrence S. Wescott

Hearing Officer.

As pointed out in the Developer's post-hearing memorandum, the Baltimore County Council has undertaken certain regulatory standards calling for the annual review of basic public services, which includes transportation services. Accordingly, the annual adopted basic services maps which apply to the Hearing Officer's review of the development plan do not contain any deficiencies in the adopted Basic Services Maps that would restrict, limit or otherwise impact the approval of the Development Plan.

In summary, the Board has examined the proposals suggested by the Appellants concerning traffic flow, etc., and can find no significant factors that were not reviewed by the County review agencies or overlooked by the Hearing Officer in his assessment of the overall development plan. The Hearing Officer concluded that many of the areas of deficiency that the Appellants suggested had existed for many years, without complaint by residents of the area; and while there is genuine apprehension concerning the impact of additional homes being built, the construction of 21 homes would not adversely affect the various facets of traffic safety within the residential community. The Board concurs with the conclusions reached by the Hearing Officer.

SUMMARY

The provisions of the BCC Section 26-206 delineate the responsibility of the Hearing Officer in assessing any proposed development plan.

Section 26-206(b) requires that the Hearing Officer grant an approval of a development plan as follows:

The hearing officer shall grant approval of a development plan